



**Swinomish Indian  
Tribal Community**



**TRIBAL - STATE COMPACT  
FOR CLASS III GAMING**

*Between the*

**Swinomish Indian Tribal  
Community**

*and the*

**State of Washington**

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## **INTRODUCTION**

THIS COMPACT is entered into pursuant to the Indian Gaming Regulatory Act of 1988, P.L. 100-497, codified at 25 USC §2701-2721 and 18 USC §1166-1168 (hereafter I.G.R.A. or Act).

## **PARTIES**

THIS TRIBAL-STATE COMPACT is made and entered into by and between the SWINOMISH INDIAN TRIBAL COMMUNITY, a federally-recognized Indian Tribe, possessed of all sovereign powers and rights thereto pertaining, reorganized pursuant to section sixteen of the Indian Reorganization Act of 1934; and the STATE OF WASHINGTON, as a sovereign state of the United States, with all rights and powers thereto pertaining.

## **RECITALS**

An understanding of the nature and characteristics of the Swinomish Tribe and its people as well as the location of the Swinomish Reservation provided the background against which the Tribe and the State negotiated this Compact to govern the conduct of Class III gaming on Swinomish Tribal Lands. The following factors were considered by the parties in the development of this Compact.

A. The Swinomish Reservation is located in rural Skagit County, fifteen miles west of the City of Mount Vernon and twenty miles southeast of the City of Anacortes. The total population of Skagit County is approximately 85,000.

B. The Reservation forms the southeastern end of Fidalgo Island and is bounded by salt water along 95% of its exterior boundaries. A four-lane highway (SR 20) between the cities of Anacortes and Burlington crosses the northern portion of the Reservation.

C. The Tribe owns a 135 acre tract of land north of SR 20 that it intends to develop into a marina and related upland services. The Tribe intends to construct its Class III gaming facility on the proposed marina site adjacent to the Tribe's Bingo facility which has been owned, operated and regulated by the Tribe since 1986. The Bingo facility is currently managed by an enrolled member of the Swinomish Tribe who is a former Assistant Vice President with SeaFirst Bank.

D. In the event that bank financing is not readily available for a new facility at the marina site, the Tribe intends to begin Class III gaming on an interim basis, in the Tribe's Longhouse Restaurant located at the southern end of the Reservation on Swinomish Channel.

E. Due to the Reservation's location, the gaming facility must rely on patrons who travel some distance from urban areas located outside of Skagit county. Travel time to the Reservation by automobile is one hour from Everett, one and one-half hours from Seattle, and two hours from Vancouver, British Columbia.

F. The Swinomish Tribe has developed a substantial and well-respected law and justice system. At the Tribe's request, the State retroceded partial criminal jurisdiction to the Tribe in 1988. The Tribe's current annual budget for law enforcement is \$460,000.

G. The Tribe's current Chief of Police is a former Snohomish County Deputy Sheriff. Tribal law enforcement includes five state-certified officers, seven reserve officers and a six-member marina

patrol unit for fisheries enforcement. The Tribe's Police Department has mutual aid agreements with the town of La Conner, the cities of Anacortes, Sedro Woolley, and Concrete; and jail services contracts with Island county, Whatcom county and the city of Anacortes. For the past two years, the Tribe has conducted State Enforcement Certification training courses for Tribal officers and for officers from Oak Harbor, La Conner and Anacortes.

H. The Tribal Court program includes a judge, prosecutor, public defender, and a full-time court clerk to oversee the court's calendar and caseload. Tribal Court is in session five full days per month.

I. The Swinomish Tribe is a leader nationally in the development of tribal environmental regulatory programs. It was the first tribe in the state and the second tribe in the nation to obtain "treatment as a state" status under section 518 of the Federal Clean Water Act for section 106 programs. The Tribe is currently constructing a \$4.5 million sewer treatment system funded by grants from the U.S. Environmental Protection Agency ("EPA") and the State Department of Ecology. The Tribe's utility department is the recognized water purveyor for the Reservation, pursuant to a water supply agreement negotiated with adjacent municipalities pursuant to the State's critical water supply laws. The Tribe's public water supply system now serves over half of the Reservation.

J. The Tribe is also a leader nationally in State-Tribal regulatory cooperation. For its participation in a pilot project with Skagit county to resolve land use issues on the Swinomish Reservation, the Tribe received the American Planning Association's Honor Award in 1991, and Washington Governor Booth Gardner's Annual Outstanding Achievement Award for 1992.

K. In keeping with its commitment to the larger Skagit county community, the Tribe currently donates an average of \$32,000 annually in bingo revenues to non-tribal local charities.

### **DECLARATION OF POLICY AND PURPOSE**

I.G.R.A. provides for the negotiation of compacts between States and Tribes to govern the conduct of Class III gaming. Indian tribes have rights under I.G.R.A. to regulate gaming activities on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a state which does not, as a matter of criminal law and public policy, prohibit such gaming activity. The overarching policy of the I.G.R.A. is to provide a framework for the operation of gaming by Indian tribes as a means of promoting Tribal economic development, self-sufficiency and strong Tribal governments, as well as providing a basis for the regulation of gaming by an Indian tribe adequate to protect the Tribe and the State from organized crime and other corrupting influences, to ensure that the Tribe is the primary beneficiary of the gaming operation and to assure that gaming is conducted fairly and honestly by both the operator and players.

This Compact is intended to be the immediate means by which the Tribe may lawfully conduct Class III gaming activities within the State which permits such gaming for any purpose by any person, organization or entity; while realizing both State and Tribal objectives by defining the manner in which laws regulating the conduct of gaming activities are to be applied.

It is the policy of the Swinomish Indian Tribal Community to exercise and retain its rights to regulate gaming activities upon its lands and reservation for the purposes of encouraging Tribal employment, economic and social development and funding of Tribal services while ensuring fair operation of such gaming, the prevention of corruption or infiltration by criminal or other unwanted influences and ensuring that public health and safety concerns are met.



While the Tribe and the State may differ in their interpretation of the I.G.R.A., the parties acknowledge that this compact reflects their commitment to negotiate an agreement to authorize Class III gaming on Swinomish tribal lands. The gaming authorized in this Compact is expected to generate substantial revenues to address economic circumstances on the Swinomish Indian Reservation, and the immediate need for Reservation land acquisition financing.

It is the policy of the State, recognizing the close relationship between professional gambling and organized crime, to restrain all persons from seeking personal profit from professional gambling activities in the State; to restrain all persons from patronizing such professional gambling activities; and to safeguard the public against the evils of professional gambling. At the same time, the policy of the State is to preserve the freedom of the press and to avoid restricting participation by individuals in activities and social pastimes, which are more for amusement than for profit, do not maliciously affect the public and do not breach the peace.

This Compact is intended to embody the policies and the shared and individual goals and concerns of the Swinomish Indian Tribal Community and the State of Washington concerning the conduct of Class III gaming on Swinomish tribal lands.

## **I. TITLE**

This document shall be cited as "The Swinomish Indian Tribal Community - State of Washington Gaming Compact."

## **II. DEFINITIONS**

For purposes of this Compact:

- A. "Act" means the Indian Gaming Regulatory Act, Pub.L. 100-497, 25 USC §2701 et seq. and 18 USC 1166 et seq. (also IGRA).
- B. "Applicant" means any individual who has applied for Tribal licensing or State certification, whether or not such license or certification is ultimately granted.
- C. "Class III Gaming" means all forms of gaming as defined in 25 USC Section 2703(8) and regulations promulgated thereunder, and authorized under Section III of this Compact.
- D. "Compact" means the Swinomish Indian Tribal Community - State of Washington Gaming Compact.
- E. "Gambling Device" means any device or mechanism the operation of which a right to money, credits, deposits or other things of value may be created, in return for a consideration, as the result of the operation of an element of chance and any device or mechanism which, when operated for a consideration, does not return the same value or thing of value for the same consideration upon each operation thereof.
- F. "Gaming Employee" means any person employed in the operation or management of the gaming operation, whether employed by or contracted to the Tribe or by any person or enterprise providing on or off-site services to the Tribe within or without the gaming facility regarding any Class III activity, including, but not limited to, gaming operation managers and assistant managers; accounting personnel; surveillance and security personnel; cashier supervisors; dealers or croupiers, box men; floormen; pit bosses; shift bosses; cage personnel; collection personnel; gaming consultants; management companies and their principals; and any other natural person whose employment duties require or authorize access to restricted areas of the gaming facility not otherwise opened to the public. Depending upon the duties involved in any position in the gaming operation, the State and Tribal Gaming Agencies may, by mutual agreement, exclude some employees who are included under this definition, or include other employees not listed.
- G. "Gaming Facility" means the room or rooms in which Class III Gaming as authorized by this Compact is conducted on Swinomish Tribal Lands.
- H. "Gaming Operation" means the enterprise operated by the Tribe on Swinomish Tribal Lands for the conduct of any form of Class III gaming in any gaming facility.
- I. "Gaming Services" means the providing of any goods or services to the Tribe directly in connection with the operation of Class III gaming in a gaming facility, including equipment, maintenance or security services for the gaming facility.
- J. "Gaming Station" means one gaming table of the general size and scope as commonly used in Nevada.

K. "Individual" means, but is not limited to, natural persons and business entities including business sole-proprietorships, partnerships, corporations, joint ventures, organizations and associations.

L. "Local Law Enforcement Agency" means the Skagit County Sheriff, State Gaming Agency, Washington State Patrol, and other law enforcement agencies in the vicinity of the gaming operation which have cross deputization agreements approved by the Tribe.

M. "Net Win" means the total amount of gaming station income (gross gaming revenue), i.e., the difference between the total amount wagered or played and the amounts repaid to winners.

N. "Principal" means with respect to any enterprise: (i) each of its officers and directors; (ii) each of its principal management employees, including any chief executive officer, chief financial officer, chief operating officer, or general manager; (iii) each of its owners or partners, if an unincorporated business; (iv) each of its shareholders who own more than ten percent of the shares of the corporation, if a corporation; and (v) each person or entity other than a banking institution who has provided financing for the enterprise constituting more than ten percent of the start-up capital or operating capital over a twelve month period, or a combination thereof. For purposes of this definition, where there is any commonality of the characteristics identified in (i) through (iv) above between two or more entities, those shall be deemed to be a single entity.

O. "State" means the State of Washington, its authorized officials, agents and representatives.

P. "State Certification" means the process utilized by the State Gaming Agency to ensure that all persons required to be licensed or certified are qualified.

Q. "State Gaming Agency" means the Washington State Gambling Commission.

R. "Swinomish Tribal Lands" means Indian lands as defined by 25 USC Section 2703(4)(A) and (B), subject to the provisions of 25 USC Section 2719.

S. "Tribal Gaming Agency" means the Swinomish Tribal Gaming Commission or such other agency of the Tribe as the Tribe may designate by written notice to the State as the single Tribal agency primarily responsible for regulatory oversight of Class III Gaming as authorized by this Compact. No employee of the gaming operation may be a member or employee of the Tribal Gaming Agency.

T. "Tribal Law Enforcement Agency" or "Tribal Police Agency" means the police force of the Swinomish Indian Tribal Community established and maintained by the Tribe pursuant to the Tribe's powers of self-government to carry out law enforcement within the Swinomish Tribal Lands.

U. "Tribe" means the Swinomish Indian Tribal Community, a federally recognized Indian Tribe reorganized pursuant to section sixteen of the Indian Reorganization Act of 1934, its agents and representatives.

### **III. NATURE, SIZE AND SCOPE OF CLASS III GAMING**

#### **A. Scope of Class III Gaming Activities**

The Tribal gaming operation may utilize in its gaming facility, subject to the provisions of this Compact, any or all of the following Class III activities:

1.     Blackjack  
          Money-wheel  
          Roulette  
          Baccarat  
          Chuck-a-luck  
          Pai-gow  
          Red Dog  
          Chemin De Fer  
          Craps  
          4-5-6  
          Ship-Captain-Crew  
          Horses (stop dice)  
          Beat the Dealer  
          Over/Under Seven  
          Beat My Shake  
          Horse Race  
          Sweet Sixteen  
          Sic-Bo  
          Keno and Keno-type games  
          Caribbean Stud Poker, and  
          any other table games authorized for play in the state of Nevada.

2.     Sports Pools, on regularly scheduled athletic contests, of one hundred (100) squares wherein each square is sold for not more than ten dollars (\$10) and all proceeds, less a tribal administrative charge of no more than 50 cents for each \$10 wagered, are awarded to winners as prizes. The sports pool shall be conducted only as follows: (1) a board of paper is divided into 100 equal squares, each constituting a chance to win and each offered directly to prospective contestants; (2) the purchaser of each chance or square signs his or her name on the face of each square purchased; (3) no later than prior to the start of the athletic contest the pool is closed and no further chances are sold; (4) after the pool is closed a prospective score is assigned by random drawing to each square; (5) the sports pool board must be available for inspection by any person purchasing a chance, by the state and tribal gaming agencies or by any local enforcement agency at all times prior to payment of the prize; and (6) the tribe will conduct no other sports pool on the same athletic event.

3.     The Tribe may wish to play other table games that would also be authorized for play for any purpose by any person, organization, or entity in the state of Washington and that are not otherwise treated as Class II gaming in the state pursuant to 25 USC §2703(7). In that event, the Tribe shall provide the proposed game regulations to the State Gaming Agency at least thirty (30) days prior to the time play begins. If the State takes no action within the 30 days, the Tribe may begin offering the game. If a dispute arises between the Tribe and the State regarding issues including, but not limited to, legality of the game, rules of the game, method of play, or ability of the

parties to regulate, the game shall not be utilized until the dispute is resolved in accordance with Section XI.

**B. Additional Class III Games**

The parties understand that the Swinomish Tribe may later wish to conduct other Class III games allowed under the IGRA, that are not included in this Compact, to be played on the Swinomish Reservation; for example, a tribal lottery or horse racing activity. In that event, the parties agree that if the Tribe wishes to conduct such activities, the following process will be followed:

1. The Tribe will submit a letter from the Tribal Chairman to the Governor identifying specifically the additional proposed activities as well as applicable amendments or additions to the Swinomish Tribal Code.

2. The Tribe will submit to the State Gaming Agency, together with a copy of the above letter, draft regulations covering the proposed activity.

3. The State Gaming Agency will review the regulations submitted and, with the Tribe, negotiate to develop a Compact covering operation and regulations of the Tribal activity, within the next sixty (60) days after receipt.

4. If the State disapproves the proposed regulations during the sixty (60) day period or a Compact covering the proposed activity is not finalized during the sixty (60) day period, the State and the Tribe agree to continue to negotiate to develop regulations and a Compact for at least an additional one hundred twenty (120) days prior to any action being filed against the State pursuant to 25 USC §2710(d)(7)(A)(i).

**C. Punchboards and Pull Tabs and Washington State Lottery**

In addition to the games authorized by Section III.A, the Tribe may utilize punchboards and pull tabs in the facility and at other locations within the Swinomish Tribal lands subject to licensure and regulation by the Tribe and operated in a manner consistent with the sale of punchboards and pull tabs in the Tribal bingo facility. The operation of Washington State lottery retail locations shall be subject to the provisions of Chapter 67.70 RCW, Title 315 WAC, and Tribal Ordinance. Nothing in this compact is intended to prohibit or restrict otherwise lawful and authorized class II gaming activities upon Swinomish Tribal Lands or within the gaming facility.

**D. Authorized Gaming Operation**

The Tribe shall establish one gaming facility on the Swinomish Reservation for the operation of Class III games as authorized under this Compact. The Tribe plans to construct a gaming facility within the Swinomish Reservation on Tribal-owned lands north of State Highway 20 at the Tribe's proposed marina development site. If the Tribe is unable to acquire financing for construction at this site, the Tribe shall initially conduct Class III gaming at the location of the former Longhouse Restaurant, located on the Reservation near the Tribal Administration Building. When revenues become available, the Tribe would relocate the Class III gaming to the proposed marina development site. The Tribe shall provide to the State, at least ninety (90) days prior to conversion of an existing facility or construction of a new facility on the Reservation, the specific location and site plan for the Class III gaming operation. At that time, the State and the Tribe will schedule open public meetings to discuss these plans and solicit public comment. The Tribe will fully comply with siting and land

use requirements at least as restrictive as those in the Swinomish Tribal Code and all applicable federal regulations.

**E. Forms of Payment**

All payment for wagers made in authorized forms of Class III gaming conducted by the Tribe on its Tribal Lands, including the purchase of chips for use in wagering, shall be made by cash, cash equivalent, credit card or personal check. The Tribal gaming operation shall not extend credit to any patron of the gaming operation for gaming activities.

**F. Size of Gaming Floor**

The actual Class III gaming floor within the gaming facility shall be determined by the Tribe.

**G. Size of Class III Gaming Operation**

1. **Phase One.** Until "Phase Two" is implemented as provided in Subsection 2 of this Section, the maximum number of Class III gaming stations shall not exceed thirty-one (31) plus, at the option of the Tribe, one (1) additional gaming station ("the nonprofit station"). The proceeds from the nonprofit station shall be dedicated to support non-profit and charitable organizations and their activities within the State of Washington. For the purpose of determining the proceeds from the nonprofit station only, "proceeds" shall mean the net win from the nonprofit station less expenses directly related to the operation and regulation of the nonprofit station. Capital costs shall not be considered an expense directly related to the nonprofit station. The Tribe may choose, at its option, not to deduct expenses, or to deduct less than all expenses directly related to the nonprofit station, in calculating the "proceeds" of the nonprofit station. The net win from the nonprofit station shall not be considered in calculating the community contribution provided for in Section XIII.C. of this Compact.

2. **Phase Two.** After six months of operation, the State Gaming Agency shall conduct a review of the Class III operation to determine general compact compliance and whether the conditions set forth below have been satisfied. If, as a result of the review, the State Gaming Agency determines that the operation is in compliance with these conditions, the Class III operation may immediately implement "phase two" wager limits, as provided in Section III.H., and "phase two" hours of operation, as provided in Section III.I., and may operate up to fifty (50) gaming stations plus, at the option of the Tribe, up to two (2) nonprofit stations. If the State Gaming Agency determines that the Class III operation has not satisfied the conditions, any resulting dispute will be resolved through the dispute resolution procedures set forth in Section XI of this Compact. Any increase in the number of gaming stations, hours of operation, or wager limits beyond that initially authorized during "phase one" of Class III gaming operations shall be conditioned upon the following criteria:

(a) There have been no violations of the provisions of the Compact that have resulted in sanctions imposed by the Federal District Court or the National Indian Gaming Commission.

(b) There have been no violations of the Compact which are substantial or, due to repetition, would be deemed material.

(c) There have been no material adverse impacts on the public health, safety, or welfare of the surrounding communities in the nature of criminal activities directly related to the operations of the Class III gaming facility.

(d) There have been no substantial and repeated violations of Appendix A of this Compact.

(e) The Tribal Gaming Agency has developed a strong program of regulation and control demonstrating an adequate level of proficiency, which includes the hiring of trained Tribal Gaming Agents, an independent management and reporting structure separate from that of the gaming facility or tribal bodies, a thorough and developed system for the reporting of Compact violations, and a strong and consistent regulatory presence within the Class III facility.

H. Wagering Limitations

During "phase one," as provided in Section III.G.1., wager limits shall not exceed two hundred fifty dollars (\$250). Upon implementation of "phase two," as provided for in Section III.G.2., wager limits shall not exceed five hundred dollars (\$500).

I. Hours of Operation

1. During "phase one," as provided in Section III.G.1., Class III operating hours may not exceed one hundred twelve (112) hours per week on an annualized basis. Upon implementation of "phase two," as provided for in Section III.G.2., Class III operating hours may not exceed one hundred forty (140) hours per week on an annualized basis.

2. The Tribe may schedule the hours of its Class III gaming operations to best comply with market conditions and may operate any day of the week. The Tribal Gaming Agency shall provide advance notice to the State Gaming Agency of dates and times the facility will be open to the public. Except as provided in subsection 3 of this section, the Class III gaming operation shall be open no more than twenty (20) hours in any twenty-four (24) hour period, and shall be closed to the public from 2:00 a.m. until 6:00 a.m. each day of operation; provided, that the Tribe may conduct Class III gaming operations past the hour of 2:00 a.m. upon mutual written agreement by the State Gaming Agency and the Tribal Gaming Agency and the absence of objection by local law enforcement agencies.

3. Upon thirty (30) days written notice to the State Gaming Agency and upon mutual written agreement between the State Gaming Agency and the Tribal Gaming Agency, the Tribe may, not more than three times in any calendar year, conduct continuous, uninterrupted Class III operations for a period of up to seventy-two (72) hours.

J. Ownership of Gaming Facility and Gaming Operation

The gaming operation, including the gaming facility, shall be owned, operated and managed by the Tribe. Provided, the Tribe shall be entitled to contract for management of the gaming facility and gaming operation. Such contract shall subject the manager to the terms of this Compact, including all certification and licensing requirements.

K. Prohibited Activities

Any Class III gaming activity not specifically authorized in Section III.A is prohibited. Any electronic facsimile of a gaming activity and all gambling devices are prohibited.

L. Concurrent Operation of Class III and Class II Activities

The I.G.R.A. provides authority to Indian tribes to offer specific gaming activities as Class II gaming, and the operation of this Class II gaming is under the jurisdiction of the tribe subject to the provisions of the I.G.R.A. Nothing herein is intended to prohibit or restrict otherwise lawful and authorized Class II gaming activities upon Swinomish Tribal Lands or within the gaming facility. The parties to this Compact anticipate that any Class II activities on Swinomish Tribal Lands will be conducted in a separate facility or in a portion of the gaming facility that is separate from that portion where the Class III games authorized by this Compact are offered. Commingling of those Class III games with the Class II activities could impact the regulatory scheme established in this Compact, necessitating a separation of gaming revenues, records, and licensees and identification of the Class II and Class III gaming stations and operations. In the event the Tribe wishes to commingle Class III and Class II activities, the Tribal and State Gaming Agencies agree to fully review these issues and shall execute an agreement to facilitate and ensure effective and efficient monitoring and regulation under the terms of this Compact and the I.G.R.A.

**M. Prohibition on Minors**

No person under the age of eighteen (18) shall participate in any gaming operation, or be allowed on the gaming floor authorized by this Compact during actual hours of operation. Should alcoholic beverages be offered on the gaming floor pursuant to applicable law, then no patron under the age of twenty-one (21) shall be permitted on the gaming floor during actual hours of operation.

**N. Prohibition on Firearms**

The possession of firearms by any person within the gaming facility shall be strictly prohibited, and a notice to such effect will be posted on the premises. Provided, this prohibition shall not apply to authorized agents or officers of the Tribal Gaming Agency, Tribal Law Enforcement Agency, State Gaming Agency, or state and local law enforcement agencies.

**O. Financing**

Any party extending financing, directly or indirectly, to the gaming facility or gaming operation shall be subject to the annual licensing requirements of the Tribal Gaming Agency, and shall be required to obtain State certification prior to completion of the financing agreement, and annually thereafter. These licensing and certification requirements do not apply to financing provided by a federally regulated commercial lending institution, the Swinomish Tribal government, or the Federal government. Provided, the source of all funds will be fully disclosed to the State Gaming Agency.

**IV. LICENSING AND CERTIFICATION REQUIREMENTS**

**A. Gaming Operation and Facility**

The gaming operation and gaming facility authorized by this Compact shall be licensed by the Tribal Gaming Agency in conformity with the requirements of this Compact prior to commencement of operation, and annually thereafter. Initial verification of this requirement shall be made by the State Gaming Agency and the Tribal Gaming Agency through a joint pre-operation inspection, conducted at least ten (10) days prior to scheduled opening of the facility to the public, and a joint letter of compliance. If a dispute arises during the inspection, it shall be resolved pursuant to Section XI of this Compact.

**B. Gaming Employees**



Every gaming employee shall be licensed by the Tribal Gaming Agency prior to commencement of employment, and annually thereafter. Further, all gaming employees shall be certified by the State prior to commencement of employment, and annually thereafter.

C. Manufacturers and Suppliers of Gaming Services

Each manufacturer and supplier of gaming services, shall be licensed by the Tribal Gaming Agency and shall be certified by the State prior to the sale of any gaming services. If the supplier or manufacturer of the services or goods is licensed or certified by the State of Washington for that purpose, they shall be deemed certified to supply those services or goods for the purposes of this Compact. The licensing and certification shall be renewed and maintained annually.

V. LICENSING AND STATE CERTIFICATION PROCEDURES

A. Procedures For Tribal License Applications and State Certification

Each applicant for a Tribal gaming license and State certification shall submit the completed application along with the required information to the Tribal Gaming Agency. These forms shall contain information, documentation and assurances as may be required by the Tribal and State Gaming Agencies concerning the applicant's personal history, references, criminal record, business activities, financial affairs, work history and experience, and educational background. Each completed application must be accompanied by the applicants' fingerprint cards, current photographs, and the fees required by the Tribal and State Gaming Agencies. Upon receipt, the Tribe will transmit a copy of license application materials for each applicant, together with fingerprint cards, a current photograph and any fee required, to the State Gaming Agency. For applicants who are business entities, these provisions shall apply to the principals of such entities.

B. Background Investigations of Applicants

Upon receipt of a completed application and the required fee for State certification, the State Gaming Agency shall conduct the necessary background investigation to ensure that the applicant is qualified for State certification. The State Gaming Agency shall expedite state certification requests submitted by the Tribe. Upon completion of the necessary background investigation, the State Gaming Agency shall either issue a State certification to the applicant with a copy to the Tribal Gaming Agency, or deny the application based on the criteria set forth in this Compact. If the application for certification is denied, a statement setting forth the grounds for denial shall be forwarded to the applicant in accordance with the provisions of Chapter 230-50 WAC with a copy forwarded to the Tribal Gaming Agency.

C. Grounds for Revocation, Suspension, or Denial of State Certification

The State Gaming Agency shall grant, deny, revoke or suspend a State certification based on the standards established in RCW 9.46.075. In general, certification may be denied if the applicant:

1. Is determined to be a person whose prior activities, criminal record, if any, or reputation, habits or associations pose a threat to the effective regulation of gaming or create or enhance the chances of unfair or illegal practices, methods and activities in the conduct of the gaming

activities permitted pursuant to this Compact or has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by any provision of a Tribal/State Compact.

2. Has failed to provide any information reasonably required to investigate the application for state certification or to reveal any fact material to such application, or has furnished any information which is untrue or misleading in connection with such application.

3. Has had a tribal gaming license revoked or denied during the twelve (12) months prior to the date of receipt of the application; is currently on probation; or has demonstrated a willful disregard for compliance with gaming regulatory authority in any jurisdiction, including offenses that could subject the individual or entity to suspension, revocation or forfeiture of a gaming license.

4. The State Gaming Agency may consider any prior criminal conduct and/or current probationary status of an applicant or holder of certification, and the provisions of RCW 9.95.240 and of Chapter 9.96A RCW shall not apply to such cases.

5. For enrolled members of the Swinomish Tribe who are applicants for Class III gaming certification and licensing, the State Gaming Agency will consult with the Tribal Gaming Agency prior to denying certification to such an applicant who does not meet the criteria for certification. The Tribal and State Gaming Agencies may waive, by mutual agreement, through a provisional or conditional certification, certain criteria for such enrolled tribal members if the waiver does not pose an appreciable risk to the public or the lawful operation of the gaming facility. If the Tribe can show extenuating circumstances why an enrolled tribal member who does not meet all criteria should be further considered for a provisional or conditional certification, the Tribal and State Gaming Agencies may agree to a temporary certification, based on specific conditions and a further detailed review of the applicant. Additional fees may be required to maintain a conditional or provisional certification.

6. Notwithstanding anything herein to the contrary, in the absence of other violations, it shall not be automatic grounds for revocation, suspension or denial for an enrolled member of the Swinomish Tribe or member of another federally recognized Indian Tribe to have been charged or convicted of a non-gambling related offense related solely to the exercise or defense of treaty rights. Such Indian individuals, in the absence of other violations, activities or factors which would warrant denial, revocation or suspension shall not be barred from certification solely as a result of these activities.

D. Right To Hearing For Revocation, Suspension, or Denial of State Certification

Any applicant for State certification, or holder of a State certification, with the exception of those holding provisional or conditional certifications, shall be entitled to a full hearing on any action by the State Gaming Agency which may result in the revocation, suspension, or denial of State certification. The hearing will be conducted in accordance with the procedures contained in RCW 9.46.140, as now or hereafter amended, and with those applicable provisions contained in Chapter 34.05 RCW and Chapter 230-50 WAC incorporated by reference into this Compact. Provided, the State may defer such actions to the Tribal Gaming Agency at the State's discretion. These provisions shall not prevent the Tribal Gaming Agency from invoking its independent disciplinary procedures and proceedings.

E. Denial, Suspension, or Revocation of Licenses Issued By

## Tribal Gaming Agency

The denial, suspension, or revocation of any Tribal gaming license by the Tribal Gaming Agency shall be in accordance with Tribal ordinances and regulations governing such procedures.

### F. Duration and Renewal of Tribal Issued Licenses and State Certifications

Any license issued by the Tribe or certification issued by the State shall be effective for one year from the date of issuance. Provided, that a licensed or certified employee or party that has applied for renewal may continue to be employed under the expired license or State certification until action is taken on the renewal application by the Tribal Gaming Agency or State Gaming Agency. Applicants for renewal of license or certification shall provide updated material as requested, on the appropriate renewal forms, but shall not be required to re-submit historical data already available to the Tribal Gaming Agency or the State Gaming Agency. Additional background investigation shall not be required unless new information concerning the applicant's continuing suitability or eligibility for a Tribal license or a State certification is discovered by either the Tribal Gaming Agency or the State Gaming Agency.

### G. Identification Cards

The Tribal Gaming Agency shall require all gaming employees to wear, in plain view, identification cards issued by the Tribal Gaming Agency which include photo, first name and an identification number unique to the individual tribal license and/or certification, a Tribal seal or signature, and a date of expiration.

### H. Exchange of Tribal Licensing and State Certification Information

Both the Tribe and the State shall strive to ensure a qualified work force in all areas of Class III gaming and in all types of gambling authorized under the laws of the State. Therefore, upon completion of any administrative action against a Tribal license or State certification, the final disposition shall be forwarded to either the Tribal Gaming Agency or the State Gaming Agency and maintained as part of both agencies permanent licensing records.

### I. Fees For State Certification

The fees for State certification shall be as follows:

1.	Gaming Employee (in-state) Initial Certification	\$ 200.00
2.	Gaming Employee (out-of-state) Initial Certification	250.00
3.	Gaming Employee - Renewal	125.00
4.	Manufacturers, Suppliers, Financiers, or Management Entities (in-state) Initial Certification	1500.00

- |    |   |         |
|----|---|---------|
| 5. | Manufacturers, Suppliers, Financiers,<br>or Management Entities (out-of-state)<br>Initial Certification | 5000.00 |
| 6. | Manufacturers, Suppliers, Financiers,<br>or Management Entities<br>Renewal                              | 500.00  |

Provided, should costs incurred by the State Gaming Agency exceed the above fees, such actual and reasonable costs will be assessed to the applicants during the investigation process. Payment in full to the State Gaming Agency will be required prior to the issuance of State certification. The State Gaming Agency may modify any of the above fees consistent with like fees charged by the State Gaming Agency for gaming elsewhere in the State by giving the Tribe sixty (60) days notice of intent to modify fees. Should a dispute arise under this section it shall be resolved pursuant to Section XI of this Compact.

J. Fees For Tribal License

The fees for all gaming employee licenses shall be set by the Tribal Gaming Agency.

K. Temporary Certification of Gaming Employees

Unless the background investigation undertaken by the State Gaming Agency, within thirty (30) days of the receipt of a completed application discloses that the applicant has a criminal history, or unless other grounds sufficient to disqualify the applicant pursuant to compact provisions are apparent or have been discovered during that period, the State Gaming Agency shall, upon request of the Tribal gaming operation, issue a temporary certification to the applicant. The temporary certification shall become void and be of no effect upon either the issuance or denial of a State certification in accordance with the provisions of this Compact. During the twelve month (12) period immediately following the effective date of this Compact, any applicant who has a current license issued by the State Gaming Agency may submit current license information together with his or her completed application, and the authorization for the release of all such information and shall be immediately issued a temporary certification by the State Gaming Agency pending completion of the certification investigation.

L. Certification Decisions - Dispute Resolution for Tribal Members

For disputes between the State and Tribal Gaming Agencies regarding suitability for initial certification of an enrolled member of the Swinomish Tribe that cannot be resolved through agreement of the parties or provisional/conditional certification, the parties agree to seek resolution, if necessary, through the arbitration procedures established in Section XI of this Compact. In the event the State Gaming Agency has issued an intent to deny certification, the Tribe may elect to utilize the arbitration procedure in Section XI or the state administrative process. Provided, that the Tribe shall pay the entire cost incurred for arbitration regarding the State's certification decisions. Provided further, that the State will only be obligated to pay their share of such costs if certification approval is unreasonably withheld and it is clearly shown, through a pattern of the State's certification decisions being routinely overturned by arbitration, that the State's denial of certification is incorrect and unreasonable. The Tribe will have the burden of proving that the State is unreasonably withholding certification and that the State's certification decisions show a pattern of being incorrect and unreasonable. The applicant will not be allowed to begin work until the dispute regarding suitability for certification is resolved.

**M. Summary Suspension of Tribal License or State Certification**

The Tribal Gaming Agency, pursuant to the laws of the Tribe, and the State Gaming Agency, pursuant to the laws of the State, may summarily suspend any respective Tribal license or State certification if the continued licensing or certification of a person or party constitutes a potentially serious threat to the public health, safety or welfare.

**N. Submission to State Administrative Process**

Any applicant for State certification agrees, by submitting such application, to agree to and comply with all State procedures and processes to the extent necessary to determine qualification to hold such certification, including all necessary administrative procedures, hearings and appeals pursuant to RCW 9.46, WAC 230-50, and the State Administrative Procedures Act, RCW 34.05, and submits to the jurisdiction of the State and waives any defenses to such jurisdiction, and the application shall so reflect. Nothing in this section shall be deemed or interpreted as a waiver of immunity or submission to State jurisdiction for any other purpose or cause of action.

**O. Decertification of Key Management Personnel**

The State will not summarily suspend or revoke the certification of key management personnel with supervisory responsibilities in the Class III gaming facility for noncompliance with only the procedural requirements of this Compact and applicable laws incorporated herein. Because summary suspension or revocation of certification of such personnel could jeopardize proper operation of the gaming facility, the intent of the State to summarily suspend or revoke certification of such personnel will first be discussed with the Tribal Gaming Agency. In the event that the Tribe challenges a summary suspension or revocation of key management personnel under the provisions stated in this section, the management employee shall not be removed from employment pending completion of a hearing process unless that individual poses an imminent threat to public health, safety and welfare or to the lawful operation of the gaming facility.

**VI. TRIBAL ENFORCEMENT OF COMPACT PROVISIONS**

**A. Tribal Gaming Agency**

The primary responsibility for the on-site regulation, control and security of the gaming operation authorized by this Compact, and for enforcement of this Compact within Swinomish Tribal Lands, shall be that of the Tribal Gaming Agency. Enforcement of Compact provisions will be carried out in conjunction with the Tribal Police Department. The Tribal Gaming Agency shall perform the following functions:

1. Enforce in the gaming operation, including the facility, all relevant laws;
2. Ensure the physical safety of patrons in the establishment;
3. Ensure the physical safety of personnel employed by the establishment;
4. Ensure the physical safeguarding of assets transported to and from the gaming facility and cashier's cage department;

5. Protect the patrons' and the establishment's property from illegal activity;
6. Temporarily detain persons who may be involved in illegal acts, for the purpose of notifying the law enforcement authorities; and
7. Record, in a permanent and detailed manner, any and all unusual occurrences within the gaming facility. Each incident, without regard to materiality, shall be assigned a sequential number and, at a minimum, the following information shall be recorded in indelible ink in a bound notebook from which pages cannot be removed and each side of each page of which is sequentially numbered:
  - a. the assigned number;
  - b. the date;
  - c. the time;
  - d. the nature of the incident;
  - e. the person involved in the incident; and
  - f. the security department or Tribal Gaming Agency employee assigned.

**B. Inspectors**

The Tribal Gaming Agency and/or Tribal Police Department shall employ qualified inspectors or agents who shall be independent of the Tribal gaming operation, and supervised and accountable only to the Tribal Gaming Agency and/or Tribal Police Department.

**C. Reporting of Violations**

At least one Tribal gaming inspector shall be present in the gaming facility during all hours of gaming operation, and shall have immediate access to any and all areas of the gaming operation for the purpose of ensuring compliance with the provisions of this Compact and Tribal Ordinances. Any violations of the provisions of this Compact, or of Tribal Ordinances by the Tribal gaming operation, a gaming employee, or any person on the premises whether or not associated with the Tribal gaming operation shall be reported immediately to the Tribal Gaming Agency and forwarded to the State Gaming Agency, in writing, within seventy-two (72) hours of the time the violation was discovered.

**D. Investigation and Sanctions**

The Tribal Gaming Agency shall investigate any reported violation of the Compact provisions and shall require the Tribal gaming operation to correct the violation upon such terms and conditions as the Tribal Gaming Agency determines are necessary. The Tribal Gaming Agency shall be empowered by Tribal Ordinance to impose fines and other sanctions within the jurisdiction of the Tribe against a gaming employee, a management company employee, or any other person directly or indirectly involved in, or benefiting from, the gaming operation.

**E. Reporting to State Gaming Agency**

The Tribal Gaming Agency shall forward copies of all completed incident and investigation reports and final dispositions to the State Gaming Agency on a continuing basis. If requested by the Tribal Gaming Agency, the State Gaming Agency shall assist in any investigation initiated by the Tribal Gaming Agency and provide other requested services to ensure proper compliance with the provisions of this Compact, Tribal Ordinances, laws of the Tribe, and applicable laws of the State.

F. Quarterly Meetings

In an attempt to develop and foster a relationship in the enforcement of the provisions of this Compact, representatives of the State Gaming Agency and the Tribal Gaming Agency shall meet, not less than on a quarterly basis, to review past practices and examine methods to improve the regulatory program created by this Compact. The meetings shall take place at a location selected by the Tribal Gaming Agency. The State Gaming Agency prior to or during such meetings shall disclose to the Tribal Gaming Agency any concerns, suspected activities or pending matters reasonably believed to constitute possible violations of this Compact by any person, organization or entity, unless such disclosure would compromise the interest sought to be protected.

**VII. STATE ENFORCEMENT OF COMPACT PROVISIONS**

A. Monitoring

The State Gaming Agency shall, pursuant to the provisions of this Compact, have the authority to monitor the Tribal gaming operation to ensure that the operation is conducted in compliance with the provisions of this Compact. In order to properly monitor the Tribal gaming operation, agents of the State Gaming Agency shall have free and unrestricted access to all areas of the gaming facility during normal operating hours with or without giving prior notice to the Tribal gaming operation. Provided, that whenever possible, notice shall be given to the Tribal Gaming Agency, a tribal gaming inspector in the facility, or the Chief of the Swinomish Police Department, and the Tribe may assign a Tribal agent or other representative to accompany the State representative while on Tribal lands. Where there is reason to believe that criminal acts are being committed, or there is a bona fide reason to believe that notice to those Tribal representatives listed above could jeopardize the safety of individuals or the effectiveness of an investigation, the State may notify the appropriate federal authorities in lieu of Tribal notification. Following the investigation, and to the extent such disclosure does not jeopardize the investigation or the personal safety of individuals, the State shall provide the Tribal Gaming Agency or Police Department with a report of the investigation including the reasons for not providing advance notice and including information about evidence gathered in connection with the investigation.

B. Access to Records

Agents of the State Gaming Agency shall have authority to review and copy, during normal business hours, all records maintained by the Tribal gaming operation. Provided, that any copy of these investigative records and any information derived from them, shall be deemed confidential, and proprietary financial information of the Tribe. The State Gaming Agency shall notify the Tribe of any requests for disclosure of such information and shall not disclose until the Tribe has had a reasonable opportunity to challenge the request. Any records or copies removed from the premises shall be forthwith returned to the Tribe after use, unless otherwise permitted to be retained by the State Gaming Agency under this Compact. Provided further, this public disclosure prohibition shall not apply to evidence used in any court or arbitration proceeding authorized by this Compact.

Should a dispute arise under this section which cannot be resolved by a meeting of the parties, it shall be resolved pursuant to Section XI of this Compact.

C. Tribal Gaming Agency Notification

At the completion of any inspection or investigation, copies of the investigative report, including copies of evidence and information gathered in conjunction with the investigation, shall be forwarded to the Tribal Gaming Agency.

D. Cooperation With Tribal Gaming Agency

The State Gaming Agency shall meet periodically with the Tribal Gaming Agency and cooperate fully in all matters relating to the enforcement of the provisions of this Compact. The State Gaming Agency shall immediately notify either the Tribal Gaming Agency or the Swinomish Police Department of any activity suspected or occurring whether within the gaming facility or not, which adversely affects State, Tribal or public interests relating to the gaming facility and operation, unless such disclosure would compromise the interest sought to be protected. Following an investigation for which no disclosure is provided, the State shall provide the Tribe with a written report, including the basis for not disclosing the information, and information about evidence gathered in connection with the investigation.

## VIII. JURISDICTION

A. Civil Matters

1. Investigative Authority. The Tribal Gaming Agency and the State Gaming Agency shall have concurrent jurisdiction to investigate violations of the provisions of this Compact, and to bring administrative charges for such violations, in accordance with the provisions of Tribal Laws and the provisions of Chapter 9.46 RCW, incorporated by reference in Section VIII.C of this Compact, and applicable provisions of Chapter 34.05 RCW and Chapter 230-50 WAC, against any individual or business entity that is licensed by the Tribe or certified by the State Gaming Agency in accordance with Section IV and Section V of this Compact. In recognition of the need to foster a regulatory program to enforce the provisions of this Compact, the Tribe consents, as needed, to the exercise of jurisdiction over such administrative actions by the Office of Administrative Hearings and Superior Courts of the State, but only with respect to such actions to enforce the provisions of this Compact.

Further, after the date of final approval of this Compact, no new state gaming license shall be issued to a person, organization or business wanting to establish gambling on lands within the Swinomish Indian Reservation without the prior concurrence of the Tribe. In the event the parties disagree regarding this approval, dispute resolution will be under Section XI of this Compact.

2. Tribal Jurisdiction. Civil disputes arising from the conduct of gaming under the Swinomish Tribal Code may be heard in Swinomish Tribal Court or the appropriate administrative forum as established by the Code.

B. Criminal Matters

1. Investigative Authority. The Tribal Gaming Agency, the Swinomish Tribal Police, the Skagit County Sheriff, the Washington State Patrol, the State Gaming Agency or other local law enforcement agencies shall have the authority to investigate and make arrests if necessary for all



gambling and related crimes against the laws of the Tribe and of Chapter 9.46 RCW incorporated by reference in Section VIII.C of this Compact, that occur within the gaming facility or within Swinomish Tribal Lands.

2. Protocol. No protocol or priority will determine which agency will respond, and nothing contained in this section shall impact any cross deputization agreement between the Swinomish Tribe and local law enforcement agencies, or impact the current allocation of jurisdiction relating to the criminal laws of the State and the Tribe involving non-gambling related crimes.

3. Venue. Following investigation and arrest, formal charges will be brought in the appropriate venue. Criminal prosecution will be through the proper state, tribal or federal court.

4. Jurisdictional Forums. Following investigation and arrest, formal charges will be brought in the appropriate forum. Criminal prosecution of non-tribal members will be through the proper State or Federal courts. An enrolled member of the Tribe who is a criminal defendant will be prosecuted in Tribal or Federal Court. Wherever possible, for criminal defendants who are tribal members, Tribal court will be the preferred venue for individual prosecutions unless the Tribe declines to place jurisdiction in the Tribal Court within a reasonable time.

C. Limited Application of State Law

For the purposes of 18 USC §1166(d), enforcing the provisions of this Compact, and for protection of the public health, safety and welfare; and to the extent not inconsistent with other provisions of this Compact, RCW 9.46.075; 9.46.140; 9.46.155; 9.46.160; 9.46.170; 9.46.180; 9.46.185; 9.46.190; 9.46.196; 9.46.198; 9.46.220; 9.46.221; 9.46.222; 9.46.230; and 9.46.240, as now or hereafter amended, shall be applicable and incorporated by reference herein as part of this Compact and the Tribe consents to this transfer of jurisdiction to the State with respect to Class III gaming on Swinomish Tribal Lands. Amendments shall be incorporated by reference and made part of this Compact by resolution of the Tribal and State Gaming Agencies. Provided, that for changes to RCW 9.46.075 or 9.46.140, amendments shall not be applicable if they materially impact the ability of the Tribe to conduct Class III gaming activities pursuant to this Compact. Provided further, disputes may be resolved under the provisions of Section XI if necessary.

D. Exception to Consent

Except for the transfer of jurisdiction to the State with respect to Class III gaming on Swinomish Tribal Lands to the extent provided for in this section and elsewhere in this Compact for acts of individuals, nothing in this Compact shall be deemed a consent or submission of or by the Tribe to the jurisdiction and application of other laws of the State.

E. Law Enforcement Coordination

In an attempt to foster a spirit of cooperation between the law enforcement agencies authorized to enforce the criminal laws of the State, of the Tribe, and those laws affecting the public health, safety and welfare of the surrounding communities, representatives of those law enforcement agencies shall meet prior to commencement of operations and periodically thereafter to discuss mutual concerns and coordinate the enforcement actions necessary to minimize those concerns.

## **IX. ENACTMENT OF COMPACT PROVISIONS**

### **A. State Gaming Agency Rules or Regulations**

Pursuant to its general rule making authority contained in Chapter 9.46 RCW, the State Gaming Agency may enact as part of its rules or regulations governing gambling, all or part of the provisions of this Compact.

### **B. Tribal Gaming Agency Regulations**

Pursuant to its general rule making authority, the Tribal Gaming Agency may enact as part of its regulations governing gambling, all or part of the provisions of this Compact.

## **X. REGULATIONS FOR THE OPERATION AND MANAGEMENT OF THE TRIBAL GAMING OPERATION**

### **A. Adoption of Regulations for Operation and Management**

The Tribal Gaming Agency shall adopt regulations to govern the operation and management of the gaming operation conducted under the authority of this Compact. The regulations shall ensure that the provisions of this Compact are properly enforced. The regulations shall maintain the integrity of the gaming operation and shall reduce the dangers of unfair or illegal practices in the conduct of the Class III gaming operation. The initial regulations to govern the operation and management of the Tribal gaming operation shall be the standards set forth in Appendix A.

The Tribal Gaming Agency shall notify the State Gaming Agency of any intent to revise the standards set forth in Appendix A and shall request the concurrence of the State Gaming Agency for such revisions. State Gaming Agency concurrence shall be deemed granted unless written disagreement is delivered to the Tribal Gaming Agency within sixty (60) days of submission of the revised standards. The State Gaming Agency shall concur with the proposed revisions upon request, unless it finds that they would have a material adverse impact on the public interest in the integrity of the gaming operation, and shall disagree only with such portions which are determined to have a material adverse impact upon the public interest. If the State Gaming Agency disagrees with the request of the Tribal Gaming Agency, it shall set forth with specificity the reasons for such disagreement. Upon a notice of disagreement, the parties shall meet, and in good faith try to resolve the differences. If unsuccessful, the matter shall be resolved pursuant to Section XI.C of this Compact.

### **B. Additional Operational Requirements Applicable To Class III Gaming**

The following additional requirements shall apply to the gaming operation conducted by the Tribe:

1. To ensure integrity, the Tribal gaming operation shall maintain the following logs as written, or computerized records which shall be available for inspection by the State Gaming Agency in accordance with Section VII.B of this Compact: a surveillance log recording all surveillance activities in the monitoring room of the gaming facility; a security log recording all unusual occurrences for which the assignment of a Tribal Gaming Agency employee is made.

2. The Tribal Gaming Agency shall establish and maintain a list of persons barred from the gaming facility because their criminal history or association with career offenders or career

offender organizations poses a threat to the integrity of the gaming activities of the Tribe. The Tribal Gaming Agency shall employ its best efforts to exclude persons on such list from entry into its gaming facility. The Tribal Gaming Agency shall send a copy of its list on a quarterly basis to the State Gaming Agency.

3. The Tribal Gaming Agency shall require the audit of the Tribal gaming operation, not less than annually, by an independent certified public accountant, in accordance with the American Institute of Certified Public Accountants' auditing and accounting standards for audits of casinos.

4. The Tribal Gaming Agency shall notify the State Gaming Agency of the rules of each game operated by the Tribe and of any change in such rules. Summaries of the rules of each game relevant to the method of play and odds paid to winning bets shall be visibly displayed or available in pamphlet form in the gaming facility. Betting limits applicable to any gaming station shall be displayed at such gaming station. Rules for games identified in Section III.A shall be based upon such games as commonly practiced in Nevada, including wagering, and shall not fundamentally alter the nature of the game. Rules for games identified in Section III.A shall be submitted to the State Gaming agency for review, and to determine if the rules fundamentally alter the nature of the game. The Tribe will provide the State Gaming Agency ten (10) days advance notice of the rules of each game and any modifications of those rules, and will provide adequate notice to patrons of the gaming operation facility to advise them of the applicable rules in effect. In the event of a dispute, the matter will be handled in accordance with Section XI.C of this Compact.

5. The Tribal gaming operation shall maintain a closed circuit television system in accordance with the regulations set forth in Sections 6(2) and 6(3) of Appendix A, and shall not modify such regulations without the agreement of the State Gaming Agency. The Tribal gaming operation shall provide the Tribal Gaming Agency and the State Gaming Agency with copies of its floor plan and closed circuit television system and any modifications thereof, for review by the Tribal Gaming Agency. If the floor plan or closed circuit television system does not provide unobstructed camera views in accordance with such regulations, the Tribal Gaming Agency shall modify such floor plan or closed circuit television system in order to remedy such deficiency. The Tribal Gaming Agency shall forward a copy of the final floor plan and closed circuit television system to the State Gaming Agency for review and consideration prior to final approval. In the event of a dispute, the matter will be handled in accordance with the provisions of Section XI.C of this Compact.

6. The Tribal gaming operation shall maintain a cashier's cage in accordance with the standards set forth in Section 7(3)(d) and Section 9 of Appendix A, and shall not modify such standards without the concurrence of the State Gaming Agency. The Tribal Gaming Agency and the State Gaming Agency may review cashier's cage security. If the cashier's cage does not comply with the security standards set forth in Appendix A, the Tribal operation shall modify its cashier's cage to remedy such deficiency. In the event of a dispute the matter will be handled in accordance with provisions of Section XI.C of this Compact.

7. The Tribal gaming operation shall provide the Tribal Gaming Agency and the State Gaming Agency with a description of its minimum requirements for supervisory staffing for each table gaming pit operated in its gaming facility. In the event that the State Gaming Agency regards such supervisory staffing as inadequate to protect the integrity of the table games, the Tribal Gaming Agency and State Gaming Agency shall promptly confer in good faith in an effort to reach agreement on supervisory staffing requirements. If agreement cannot be reached between the State Gaming Agency and the Tribal Gaming Agency, the dispute shall be handled in accordance with Section XI.C of this Compact.

## **XI. REMEDIES FOR BREACH OF COMPACT PROVISIONS**

### **A. Injunction Against the State**

If the Tribe believes the State, whether or not through the State Gaming Agency, is in breach or default or is otherwise acting contrary to, or failing to act in the manner required by any of the provisions of this Compact, the Tribe may seek injunctive or other relief in a court of competent jurisdiction.

### **B. Injunction Against the Tribe, the Tribal Gaming Operation, or any Individual**

The State Gaming Agency may bring an action to enjoin the Tribe, the Tribal gaming operation, or any individual, if the State determines that any gaming operation authorized by the provisions of this Compact is being conducted in violation of the provisions of this Compact. If any Class III activity is being conducted by others elsewhere on Swinomish Tribal Lands in violation of the provisions of this Compact, the State may also seek to enjoin that activity. Such action shall be brought in the U.S. District Court, pursuant to 25 USC §2710(d)(7)(A)(ii). For the purpose of this remedy, the Tribe consents to such suit and waives any defense it may assert by way of its sovereign immunity.

### **C. Dispute Resolution**

In addition to the other remedies and enforcement provisions elsewhere in this Compact and without prejudice to either party to seek injunctive relief against the other, the parties hereby establish a method of non-judicial dispute resolution in order to foster a spirit of cooperation and efficiency in the administration and monitoring of performance and compliance by each with the terms, provisions and conditions of this Compact. Unless other procedures and time frames are elsewhere set forth in this Compact, in the event of a dispute or disagreement between the parties regarding the implementation of and compliance with this Compact where referenced herein or otherwise by mutual agreement of the parties, the dispute or disagreement shall be redressed as follows:

1. Either party shall give the other, as reasonably proximate to the event giving rise to the concern, a notice setting forth the issues to be resolved;
2. The parties shall meet and confer not later than ten (10) days from receipt of the notice;
3. If the dispute is not resolved to the satisfaction of either within twenty (20) days of the first meeting, either party may seek and cause to have the dispute resolved by and in accordance with the policies and procedures of the American Arbitration Association (AAA) of Seattle, Washington;
4. The hearing, unless another date is stipulated to by the parties, shall occur no later than fourteen (14) days from judge(s) selection. The hearing shall be before an AAA judge or judges of agreed selection by the parties, but in the event there is no agreement on selection of a judge or judges, then as selected by AAA;
5. The hearing shall occur at a time, place and location of mutual selection, but if such cannot be agreed to, then as selected by AAA;

6. The decision of AAA shall be final and unappealable. If the party against whom sanctions are sought is required to take curative or other conforming action and it is not performed or the party does not expeditiously undertake to effect a cure, or if that party is not capable of an immediate remedy, then that failure shall be deemed a default and breach of the provision(s) of the Compact at issue.

7. The rules of pleading and procedure of the American Arbitration Association - Seattle for commercial disputes shall be used, unless the parties otherwise agree to other rules and procedures and document the same by an appendix to this Compact. Should AAA cease to provide these necessary functions, then the parties agree to substitute the services of the Judicial Arbitration and Management Service of Seattle, Washington, or another comparable and agreed-upon arbitration service.

**D. Sanctions/Civil Fines**

The following is a schedule of civil fines for any infraction of the provisions of the Compact sections set forth below. These penalties are set forth as maximums to be set within the reasonable discretion of the State Gaming Agency and charged and levied against the Tribe. The imposition of sanctions and fines or the event or circumstances occasioning the charge and the extent and amount of the penalty for the infraction, if contested by the Tribe, are subject to dispute resolution under Section XI.C. All such penalties are subject to disposition under Section XI.E.

1. Violation of Terms, Conditions and Provisions of Section III: First and subsequent infractions: up to a maximum suspension of gaming operations within the facility not to exceed 5 days of operation (100 hours) per violation or the dollar equivalent of the net win to the Tribe from operations for the number of days of suspension, all not to exceed 30 days.

2. Violation of Terms, Conditions and Provisions of Section IV - Non-Certified or Non-Licensed Gaming Employee(s), Manufacturer(s), Supplier(s), & Other Entities:

(a) Employees: First infraction: Fine equal to daily net win for each day of employment divided by the number of stations in play for each day of employment. Second and subsequent infractions (same person): One day's suspension (20 hours) of gaming operations for each day of employment or a fine equal to the net win for each day of employment;

(b) Manufacturers and suppliers: First infraction: Up to \$5,000.00; second and subsequent infractions: Up to \$20,000.00.

3. Violation of Terms, Conditions and Provisions of Section X and Appendix A - Violation of Same Provision:

(a) First infraction: written warning.

(b) Second infraction: up to \$250.00.

(c) Third infraction: up to \$500.00.

(d) Any subsequent violation: up to \$1,000.00.

All penalties listed in this subsection will be charged and monitored on a per-violation basis on an annual basis dating from the issuance of the written warning. Provided, during the first six (6) months of actual operation only written warnings will be issued.

**E. Disposition of Civil Fines Collected**

Any civil fines collected by the State Gaming Agency pursuant to the provisions of this Compact shall be disbursed at the end of each fiscal year to the Washington State Council on Problem Gambling, a bona fide nonprofit organization. In the event the Washington State Council on Problem Gambling ceases to exist or substantially changes its purpose, then the parties agree to meet and in good faith designate a successor recipient bona fide nonprofit organization whose primary purposes are related to addressing the ills of compulsive and/or problem gambling within the State, Swinomish Tribal lands, and neighboring communities. Provided, in the event a dispute arises, it will be resolved pursuant to the arbitration provisions of Section XI.C. Any civil fines collected by the Tribal Gaming Agency pursuant to the provisions of this Compact shall be disbursed to the Tribe's alcohol, drug and gambling abuse program or, should such a program no longer be provided, to a law enforcement fund that is to be used by the Tribal Police Department for the exclusive purpose of enforcing the terms of this Compact.

**XII. TRIBAL REIMBURSEMENT FOR EXPENSES INCURRED BY THE STATE GAMING AGENCY**

**A. Reimbursement**

The Tribe shall reimburse the State Gaming Agency for all reasonable costs and expenses actually incurred by the State Gaming Agency in carrying out its responsibilities as authorized under the provisions of this Compact. Reimbursement shall be made for monitoring, investigative, and processing costs. With regard to administrative actions, reimbursement shall be made to the extent that costs incurred exceed the certification fees received. The State and Tribe recognize that comprehensive regulation is crucial to the effective management of the gaming operation, but that reimbursement costs are difficult to estimate at the time of negotiation and execution of this Compact. The State acknowledges that reimbursement will be sought for reasonable and actual costs based on a need to protect the interests of the Tribe, the gaming patrons and the citizens of this State. The State Gaming Agency agrees to meet at least annually with the Tribal Gaming Agency to discuss any issues related to reimbursements from the Tribe, and to develop an estimate of the reimbursable costs to be sought during the next year, based on the information reasonably available to the parties at that time.

**B. Procedure**

The State shall submit a verified, detailed statement of costs and expenses, with supporting documentation, on a quarterly basis to the Tribal Gaming Agency. The Tribe shall reimburse the State Gaming Agency within thirty (30) days after the receipt of the statement. Except as provided herein, the State shall not levy any assessment against the Tribe.

**C. Disputes**

In the event a dispute arises, it will be resolved pursuant to Section XI.C of this Compact.

**XIII. PUBLIC HEALTH, SAFETY AND ENVIRONMENTAL PROTECTION**

**A. Compliance**

The Swinomish Tribal Community recognizes its obligation to protect the public health, safety and welfare and to comply with applicable health, safety and environmental laws. The number of persons permitted to engage in gaming at the tribal facility will not exceed the number authorized by applicable safety, fire and building codes. The Tribe shall comply with and enforce standards no less stringent than those contained in the following laws, regulations and codes:

- Indian Health Service public health standards.
- All Federal laws establishing minimum standards for environmental protection.
- Applicable Environmental Protection Agency program standards and National Environmental Policy Act requirements.
- Federal water quality and safe drinking water standards.
- Uniform Building Code, including codes for electrical, fire and plumbing.
- Public health standards for food and beverage handling in accordance with U.S. Public Health Service requirements.
- Swinomish Tribal Codes and Ordinances regarding public health, safety, zoning and environmental protection standards, which standards are generally more restrictive than those enumerated above.

**B. Emergency Service Accessibility**

The Tribal Gaming Agency shall make provisions for adequate emergency accessibility and service.

**C. Community Contribution**

The Swinomish Tribe provides a Police Department and Tribal Court System that enforce criminal law and order codes against Swinomish Tribal members and other Indians and civil administrative codes against all persons within the Tribe's jurisdiction. The Tribe recognizes that adequate enforcement and the availability of support services and assistance is critical to the safe operation of Class III gaming, and that the Class III gaming facility may impact surrounding local law enforcement agencies and services and place an increased burden on them. To that end, the Tribe shall establish a fund for the purpose of providing assistance to non-tribal law enforcement and other services and shall withhold on a quarterly basis 2.0% of the net win from the Class III gaming tables authorized by this Compact for this fund. Further, during the first year of operation, the Tribe shall, on a quarterly basis beginning three months from the date the facility opens to the public, distribute this fund to non-tribal enforcement and services agencies materially impacted by the Class III gaming operation. These funds shall be shared by all agencies materially impacted by the gaming operation based on evidence of impacts presented by each agency; provided, however, that the Skagit County Sheriff has agreed to hire one additional deputy so that monitoring, routine patrol and response services will be available to cover the gaming operation and to respond promptly as needed, and the first priority for the distribution of this fund will be to the Skagit County Sheriff in an amount sufficient to cover the cost of one additional deputy. The Skagit County Sheriff shall receive directly from the fund an amount sufficient to cover the expenses for this additional position, including salary,

benefits, training and vehicle costs (currently estimated at \$50,000-\$60,000annually). An additional priority will be to support with a substantial distribution, the medic one and other emergency services provided to the Tribe by the La Conner Fire Department.

A committee shall be established consisting of a representative of the Tribal Senate, the Swinomish Chief of Police, the Skagit County Sheriff, the local fire district to be represented by the chief of the La Conner fire department, and a representative of the State Gaming Agency. The committee may be expanded or changed by mutual agreement of the Tribal and State Gaming Agencies. The committee shall meet at least annually to review impacts, level of services provided, use of these funds, and to determine the distribution of the fund. Distributions after the first twelve (12) months of operation will be made based on a negotiated memorandum of understanding (MOU) between the Tribe and the impacted agencies providing services. The MOU shall, among other things, address the services to be provided during the following year by the impacted agencies. In the event of a dispute that cannot be resolved by agreement of the parties, either the State Gaming Agency or the Tribe may seek resolution through the arbitration provisions of Section XI of this Compact. No Class II gaming revenues or non-gaming revenues such as food, beverage, wholesale or retail sales shall be included within the budgeted 2.0% sum set forth in this section.

D. Community Relations and Support

The Tribal Gaming Agency agrees to be available to meet with neighboring communities to discuss any concerns regarding the impacts of the Class III gaming operation upon the neighboring communities.

E. Alcoholic Beverage Service

Standards for alcohol service shall be subject to applicable law.

#### **XIV. AMENDMENTS, DURATION AND EFFECTIVE DATE**

A. Effective Date

This Compact shall constitute the agreement between the State and the Tribe pursuant to I.G.R.A. and shall be amended and modified only pursuant to the provisions herein and shall take effect when notice of the Compact's approval by the Secretary of the Interior has been published in the Federal Register.

B. Voluntary Termination

This Compact shall be in effect until terminated by the written agreement of both parties. Provided, should the Tribe wish to cease Class III gaming operations, the Tribe may unilaterally terminate this Compact by submitting written notice sixty (60) days prior to the date of termination to the Governor of the State of Washington. Provided, State jurisdiction shall continue until the completion of any pending investigation or court action. Provided further, suspension or injunction of Class III gaming operations shall not constitute termination for the purpose of this subsection.

C. Other Termination - Change of State Law



If the laws of the State authorizing the activities set forth herein as Class III gaming activities are repealed prohibiting such gaming for any purpose by any person, organization or entity, it is the State's position that the provisions of this Compact providing for such gaming would not be authorized, that continued operation of such gaming would constitute a violation of the Compact, and that the State may bring an action in Federal District Court pursuant to 25 USC Section 2710(d)(7)(A)(ii).

The Tribe disagrees that such subsequent State legislation would have this effect under the I.G.R.A. and the Compact, but does agree that such an action, if commenced in that forum, is the appropriate State recourse and for such limited purpose the Tribe consents to such a suit and waives any defense it may assert by way of its sovereign immunity.

**D. Amendments/Renegotiations**

**1. Amendments - Mutual**

The terms and conditions of this Compact may be amended at any time by the mutual and written agreement of both parties.

**2. Amendments - Contractual**

The parties shall amend through renegotiation the wagering limitations, hours of operation, size and/or scope of Class III gaming as set forth in Section III above upon written notice and request by the Tribe to the State if and when:

(a) the laws of the State are amended, expanding gaming beyond that which is now allowed under the terms of this Compact;

(b) a State or Federal court within the State of Washington or a federal court interpreting the laws of the State of Washington issues a final and unappealable decision that permits participation in a gaming activity that was not authorized for any purpose by any person, organization or entity at the time this Compact was executed and is not authorized by this Compact; or

(c) another tribe west of the Cascade Mountains, obtains, through a Compact approved by the Secretary of the Interior, greater levels of wagering, hours of operation, size and/or scope of Class III gaming activities, than authorized by the provisions of this Compact;

(d) a tribe east of the Cascade Mountains obtains, through a Compact approved by the Secretary of the Interior, greater levels of wagering, hours of operation, size and/or scope of Class III gaming activities, than authorized by the provisions of this Compact, and the Tribe can demonstrate that such levels have resulted in an adverse economic impact on the Class III gaming operation.

**3. Renegotiation - Tribe**

The parties shall renegotiate the nature and/or scope of Class III gaming as set forth in Section III above upon the written notice and request by the Tribe to the State if and when:

(a) laws in the State are enacted allowing gaming which is now prohibited;  
or

(b) the Tribe wishes to engage in other forms of Class III gaming other than those games authorized in Section III.A, including a Tribal lotto/lottery, off-track betting and/or horse racing track and facility.

#### **4. Renegotiation - Either Party**

(a) Except as provided in Subsection b of this Section, at any time after thirty-six (36) months from the date of opening the gaming facility authorized under this Compact, either the Tribe or the State may request renegotiation of any of the provisions of this Compact if and when circumstances or events unforeseen or not adequately addressed at the time of the negotiation and execution of this Compact occur that merit the discussion and renegotiation of such provisions. The request to renegotiate shall include the activities or circumstances the party wishes to negotiate, together with a statement of the basis supporting the request. The parties agree that negotiations shall commence within thirty (30) days of the request. The terms and provisions of the then-existing Compact will remain in effect unless and until the parties agree on the renegotiated terms.

(b) Sections III.D., III.G., III.H., and III.I., regarding number of Class III gaming facilities, number of gaming stations for table games, wager limits, and maximum hours of Class III operations, will not be subject to renegotiation or amendment for thirty-six (36) months from January 26, 1995, unless one of the following occurs: (1) the laws of the State are amended, expanding gaming beyond that which is now allowed under the terms of this Compact; (2) a State or Federal court within the State of Washington or a Federal court interpreting the laws of the State of Washington issues a final and unappealable decision permitting participation in a gaming activity that was not authorized for any purpose by any person, organization, or entity at the time this Compact was executed or was not authorized by this Compact; (3) another tribe west of the Cascade Mountains, obtains, through a Compact approved by the Secretary of the Interior, greater levels of wagering, hours of operation, size and/or scope of Class III gaming activities, than authorized by the provisions of this Compact; or (4) a tribe east of the Cascade Mountains obtains, through a Compact approved by the Secretary of the Interior, greater levels of wagering, hours of operation, size and/or scope of Class III gaming activities, than authorized by the provisions of this Compact, and the Tribe can demonstrate that such levels have resulted in an adverse economic impact on the Class III gaming operation. Further, Section XIV.D.1., which provides that the parties may "mutually agree" to renegotiations and/or Compact amendments, may not be invoked during this thirty-six (36) month period to seek changes in the authorized number of Class III gaming facilities, authorized number of gaming stations for table games, wager limits, or maximum hours of Class III operations.

#### **5. Compact Clarification and Modification**

The parties recognize that circumstances may arise in implementation, operation, and regulation of the Class III gaming facility that require minor modification or clarification of Compact provisions. For such non-substantive and agreed-upon clarification or modification, the State and the Tribe will execute and sign a Memorandum of Understanding that will be attached to and made part of this Compact.

#### **6. Renegotiation - State**

The parties shall renegotiate Sections IV, V, VII, X and XIII upon the written notice and request by the State to the Tribe if and when circumstances and events unforeseen at the time of the negotiation and execution of this Compact occur meriting discussion and renegotiation of such provisions. Provided, however, if any renegotiation of Section XIII would require additional expenditures of Tribal funds, then the source and origin of such funds must be addressed and

resolved. If the renegotiations are unsuccessful, then the matter shall be resolved pursuant to Section XI.C which in this instance shall be mandatory and binding.

7. Process and Negotiation Standards

The notices to amend or renegotiate shall include the activities or circumstances to be negotiated together with a statement of the basis supporting the request. If the request meets the requirements of this sub-section or proviso, the parties shall confer, and the required negotiations shall commence within thirty (30) days of the request. All matters involving negotiations or other amendatory processes under Section XIV shall be otherwise governed, controlled and conducted in conformity with the provisions and requirements of 25 USC Section 2710(d), except the delegation of the actual resolution of an unsettled dispute under Section XIV.D.6.

**XV. NOTICES**

Unless otherwise indicated by this Compact, all notices required or authorized to be served shall be served by certified mail or be delivered by other expedited services which require a signature for receipt at the following addresses:

Governor  
State of Washington  
State Capitol  
Olympia, WA 98504

Director  
Washington State Gambling Commission  
Post Office Box 42400  
Olympia, WA 98504-2400

Chairman  
Swinomish Tribal  
Post Office Box 817  
La Conner, WA 98257

**XVI. SEVERABILITY**

In the event that any Section or provision of this Compact is held invalid, or its application to any particular activity held invalid, it is the intent of the parties that the remaining Sections of the Compact, and the remaining applications of such Section or provision shall continue in full force and effect.

IN WITNESS WHEREOF, the Swinomish Indian Tribal Community and the State of Washington  
have executed this compact.

THE SWINOMISH INDIAN TRIBAL COMMUNITY

By: Wa Walton  
WaWalton / Robert Joe, Sr.  
Chairman, Swinomish Indian Senate

12-19-94  
Date

THE STATE OF WASHINGTON

By: Mike Lowry  
Mike Lowry  
Governor

1-26-95  
Date

This Compact was amended on

January 26, 1995

The amendment(s) are incorporated herein